WARD PETROLEUM CORP.

IBLA 85-432 Decided August 29, 1986

Appeal from a penalty assessment by the Tulsa District Office, Bureau of Land Management, for failure to timely file notice of production start-up.

Affirmed in part; vacated in part.

1. Estoppel -- Federal Employees and Officers: Authority to Bind Government

   Reliance on erroneous or incomplete information given by an employee of the Department will not excuse an oil and gas operator from compliance with applicable law and regulations.

2. Notice: Generally -- Regulations: Generally -- Statutes

   All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Civil Assessments and Penalties

   An assessment levied pursuant to 43 CFR 3163.3(h) for failure to timely file a notice of production start-up may be vacated by this Board, in view of the suspension of that regulation and a change in Departmental policy that such assessments should automatically be levied.

APPEARANCES: L. O. Ward, Esq., for Ward Petroleum Corporation.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Ward Petroleum Corporation (Ward) has appealed from the January 28, 1985, decision of the Tulsa District Office, Bureau of Land Management (BLM), levying an assessment of $ 100 against Ward pursuant to 43 CFR 3163.3(h) for failure to timely provide notice that its gas well referred to as "the No. 2 Harmon" had begun production. In its decision, BLM found that on December 6, 1984, Ward completed the No. 2 Harmon well in an area subject to Ward's Communitization Agreement MC-343, involving Federal Lease NM 0150059 (OK),

located in SE 1/4 NW 1/4 sec. 26, T. 23 N., R. 16 W., Major County, Oklahoma. The record indicates the well began production on December 10, 1984. BLM imposed the disputed assessment, effective December 18, 1984, because Ward "failed to file the required report of production start-up that was due no later than the fifth business day after placing the unit well on production."

Ward's reasons for appeal, as set forth in its February 20, 1985, letter of appeal, are three in number: (1) BLM failed to request the production start-up notice, although BLM requested that other forms and notices be filed; (2) Ward was unaware that the Department had promulgated revised regulations governing onshore oil and gas operations which called for the production start-up notice; and (3) even if Ward is to be held to the rule enunciated in 43 CFR 3162.4-1(c), Ward should be excused from paying the penalty because it substantially complied with that regulation.

Among the findings enumerated by Congress in enacting the Federal Oil and Gas Royalty Management Act of 1982 (the Act), 30 U.S.C. § 1701 (1982), was the need for the Secretary to improve methods of accounting for royalties and payments deriving from oil and gas leases on Federal and Indian lands, and to provide for routine inspection of activities related to the production of oil and gas on those lease sites. One of the stated purposes was the need "to clarify, reaffirm, expand, and define the responsibilities and obligations of lessees, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf." 30 U.S.C. § 1701(a), (b)(1) (1982).

To facilitate that finding and purpose, the Act includes a series of specific responsibilities to be undertaken by lessees and operators. The rule that operators provide notice to BLM not later than the fifth business day after a well begins production on a Federal lease site is embodied in 30 U.S.C. § 1712(b)(3) (1982):

> An operator shall * * * not later than the 5th business day after any well begins production anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off of production for more than 90 days, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

The Secretary prescribed the manner in which an operator must provide such notice in its revised regulations at 43 CFR Part 3160 governing onshore oil and gas operations. The final rulemaking, effective October 22, 1984, includes a provision which specifically implements 30 U.S.C. § 1712(b)(3) (1982):

> Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160-5, or orally to be followed by a letter or

sundry notice, of the date on which such production has begun or resumed.

43 CFR 3162.4-1(c).

Such is the statutory and regulatory framework in effect when Ward placed the No. 2 Harmon in production. For the reasons set forth below, we conclude Ward's reasons for noncompliance with the Department's regulation must be rejected.

[1] Ward's first argument on appeal is that BLM failed to request the start-up notice. Since this argument is essentially one of estoppel, we will address it as such, although Ward does not employ that legal term. Ward derives this argument from a December 27, 1984, letter from BLM, in which BLM enumerates a series of "reports and well data" which Ward should submit to BLM's Tulsa District Office. Ward was requested to submit those items on the list which were marked "X"; among those items not so marked was one that read: "Notice of Production start-up to be received in this office no later than the fifth business day after the date on which the well is placed in production." (Emphasis in original.) Ward's position is simply that had BLM requested the start-up notice, Ward would have supplied it, and that BLM should not be allowed to impose a penalty assessment on the basis that Ward failed to do so.

Ward's contention is without merit. All persons, including Ward, who deal with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Therefore, reliance upon erroneous or incomplete information provided by a BLM employee cannot relieve an oil and gas operator of an obligation imposed by statute and regulation, create rights not authorized by law, or relieve the operator of the consequences imposed by the statute for failure to comply with its requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Northwest Citizens for Wilderness Mining Co., 33 IBLA 317 (1978). In the absence of a showing of affirmative misconduct by a responsible Federal employee, an estoppel will not lie against the Government because of reliance on erroneous or inadequate information given. United States v. Ruby, 588 F.2d 687 (9th Cir. 1978).

[2] Ward's second and third arguments may be considered and rejected together. The assertion that there was "[n]o requirement in available regulations that indicate[d] that notice must be on form 3160-5 (formerly 9-332)" when No. 2 Harmon began production ignores the fact that 43 CFR 3162.4-1(c) was in place, having taken effect on October 22, 1984. Thus, the newly revised regulations were "available," regardless of whether Ward was aware of their existence. Again, those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, supra; Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976).

Likewise, Ward's argument that its filing a completed Oklahoma Corporation Commission (OCC) Form 1002a with BLM amounts to substantial compliance with 43 CFR 3162.4-1(c) is without merit. The form was not filed with BLM until January 15, 1985. Filing OCC Form 1002a 35 days after the production start-up date does not constitute substantial compliance with the requirement of 43 CFR 3162.4-1(c) that such filing must be made within 5 business days after production begins.

[3] The remaining question is whether BLM properly levied an assessment against Ward for failure to file the production start-up notice as required by 43 CFR 3162.4-1(c). BLM imposed the assessment pursuant to 43 CFR 3163.3(h), which provides in pertinent part:

> Certain instances of noncompliance result in loss or damage to the lessor, the amount of which is difficult or impracticable to ascertain. Except where actual losses or damages can be ascertained in an amount larger than that set forth below, the following amounts shall be deemed to cover loss or damage to the lessor from specific instances of noncompliance.
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> * * * * * * *
>
> (h) For failure to maintain records and file required reports, records, samples or data as required by the regulations in this part and by applicable orders and notices, $ 100.

We note, however, that the assessment regulations, including 43 CFR 3163.3(h), were suspended by notice printed in the Federal Register (50 FR 11517 (Mar. 22, 1985)). This suspension was implemented by BLM Instruction Memorandum No. 85-384 (Apr. 16, 1985), which provided in relevant part:

> Enclosed is a copy of the Notice of Intent to propose rulemaking which was published in the Federal Register on March 22, 1985. As stated in this notice, the following actions are hereby taken:
>
> * The assessment for noncompliance provisions under 43 CFR 3163.3(c) through (j) are suspended, except where actual loss or damage can be ascertained.

BLM's proposed rulemaking, published on January 30, 1986, at 51 FR 3882, would eliminate automatic assessments for failure to file reports in a timely manner under 43 CFR 3163.3(h). In Yates Petroleum Corp., 91 IBLA 252 (1985), we considered the effect of the proposed rule on assessments for noncompliance under 43 CFR 3163.3(h) and stated at pages 263, 264:

> The proposed rules would eliminate the assessment for failure to * * * file reports in a timely manner under 43 CFR 3163.3(h). In the preamble to the proposed regulations BLM states: "Assessment under the various Acts authorizing the leasing of minerals

> would be modified by the proposed rulemaking to eliminate automatic assessments for noncompliance involving violations of §§ 3163.3(d), (e), (g), (h), and (j) of the existing regulations. (Emphasis added.) 51 FR 3887 (Jan. 30, 1986). Therefore, under the proposed rules BLM would not automatically assess Yates but would be required to give Yates notice that it had * * * violated the reporting requirements.
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> We recognize that * * * 43 CFR 3163.3(h) * * * [was] in effect at the time BLM took its action, and neither the suspension nor the proposed regulations are clearly dispositive herein. They do, however, reflect the Department's present policy concerning the levy of an assessment for failure to comply with the identification and the reporting requirements. In the past this Board has applied the present BLM policy to a pending matter, if to do so would benefit the affected party, and if there were no countervailing laws, public policy reasons, or intervening rights. Somont Oil Co., Inc., 91 IBLA 137 (1986). For that reason, we vacate the decision to levy assessments pursuant to * * * 43 CFR 3163.3(h). [Footnote omitted.]

We conclude our holding in Yates is applicable to the present case, and therefore vacate that part of BLM's decision of January 28, 1985, which levied an assessment of $ 100 pursuant to 43 CFR 3163.3(h).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and vacated in part.

John H. Kelly
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

R. W. Mullen
Administrative Judge